

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

BRIAN LYNAGAAS, D.D.S., individually)
and as the representative of a class of) Case No. 17-cv-12867
similarly-situated persons,)
)
) Hon. Terrence G. Berg
Plaintiff,) Mag. Elizabeth A. Stafford
v.)
)
) CLASS ACTION
J. RECKNER ASSOCIATES, INC. d/b/a)
RECKNER HEALTHCARE and)
CALCIVIS, LTD.,)
)
)
Defendants.)

**DEFENDANT, CALCIVIS, LTD.’S, MOTION REQUESTING ORDER
GRANTING DEFNDANT’S MOTION FOR SUMMARY JUDGMENT**

Defendant, Calcivis, LTD., through its counsel, Maddin, Hauser, Roth & Heller, P.C., and for its Motion Requesting Order Granting Defendant's Motion For Summary Judgment, states as follows:

1. On August 30, 2017, Plaintiff, Brian Lyngaas, D.D.S. (“Plaintiff” or “Lyngaas”) filed his complaint against Co-Defendant, J. Reckner Associates, Inc., d/b/a Reckner Healthcare (“Defendant” or “Reckner”), arising out of Defendant Reckner’s alleged violations of the Telephone Consumer Protection ACT (“TCPA”) and Conversion.

2. Nearly two years later (20 months later), on April 16, 2019, Plaintiff

filed his First Amended Class Action Complaint joining Defendant, Calcivis, LTD. (“Defendant” or “Calcivis”), as a party.

3. On January 27, 2021, a hearing was held on Defendant Calcivis’s Motion for Summary Judgment (“MSJ”).

4. Although the Court has not yet ruled on the MSJ, the Court alluded to potential questions of fact at the MSJ hearing, which may be addressed by additional discovery.

5. Since the MSJ hearing, Defendant Calcivis has deposed two Reckner employees: 1) David Reckner, President of Defendant Reckner, and 2) Susan Phillippe, Direct of Reckner’s Healthcare Group and the Reckner employee who negotiated the agreement between Reckner and Calcivis.

6. The Reckner deposition testimony eliminates the potential questions of fact discussed during the MSJ hearing, and summary judgment is warranted.

7. On April 26, 2021, Calcivis filed a Supplemental Motion for Summary Judgment based-on the Reckner deposition testimony supporting that Calcivis had no knowledge of the fax at issue in this matter. **ECF No. 64.**

8. Plaintiff’s response was due within 21 days, on or before May 17, 2021.

9. At Plaintiff's request, Defendant Calcivis stipulated to an extension allowing Plaintiff to respond on or before June 7, 2021. (**Exhibit A**: Order re: Extension).

10. Plaintiff failed to file a response in accordance with the order.

11. At Plaintiff's second request for extension, Defendant Calcivis stipulated to a second extension allowing Plaintiff to respond on or before June 30, 2021. (**Exhibit B**: Second Order re: Extension).

12. To date, Plaintiff has not filed a response to Defendant Calcivis's Supplemental Motion for Summary Judgment.

13. On July 12, 2021, this Court entered an order that Plaintiff was required to file a response in accordance with the Eastern District of Michigan LR 7/1(e). **ECF No. 67**. Plaintiff has not complied with this Court's order.

14. The Court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. FRCP 56.

15. If a party fails to properly address another party's assertion of fact, the court may consider the fact undisputed, or grant the motion for summary judgment. FRCP 56(e)(2)(3).

16. In this case, Defendant Calcivis has filed a Supplement Motion for Summary Judgment based on Reckner's testimony that Calcivis is an innocent

party under the TCPA and that Calcivis had no knowledge of the fax that Reckner sent to the Plaintiff. *See*, ECF 64. By failing to file a response, Plaintiff has failed to address Reckner's deposition testimony and/or provide sufficient evidence to the Court to raise a genuine issue of material fact for trial. The Reckner testimony is undisputed under FRCP 56(e). Thus, Defendant's Motion for Summary Judgment should be granted.

WHEREFORE, Defendant Calcivis respectfully requests that this honorable Court enter an order granting Defendant's Motion for Summary Judgment and dismissing Defendant from this case with prejudice.

Respectfully submitted,

MADDIN, HAUSER, ROTH & HELLER, P.C.

/s/ John A. MacKenzie

Michelle C. Harrell (P48768)

John A. MacKenzie (P80386)

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Attorneys for Defendant Calcivis

Dated: August 16, 2021

PROOF OF SERVICE

I hereby certify that on **August 16, 2021**, I electronically filed the above documents and this Proof of Service with the Clerk of the Court using the ECF E-Filing system, which will send notification of such filing to those who are currently on the list to receive e-mail notices for this case.

MADDIN, HAUSER, ROTH & HELLER, P.C.

By: /s/ Sarah E. Morris
Sarah E. Morris

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**DEFENDANT, CALCIVIS, LTD.’S, BRIEF IN SUPPORT OF ITS
SUPPLEMENTAL MOTION FOR SUMMARY JUDGMENT
PURSUANT TO F.R.C.P. 56**

Defendant Calcivis relies on its motion and respectfully requests that this honorable Court enter an order granting Defendant's Motion for Summary Judgment and dismissing Defendant from this case with prejudice.

Respectfully submitted,

MADDIN, HAUSER, ROTH & HELLER, P.C.

/s/ John A. MacKenzie

Michelle C. Harrell (P48768)

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Attorneys for Defendant Calcivis

Dated: August 16, 2021

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MADDIN, HAUSER, ROTH & HELLER, P.C.

By: /s/ Sarah E. Morris

Sarah E. Morris

INDEX OF EXHIBITS

- A. Order re: Extension
- B. Second Order re: Extension